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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re JAMES L., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES L.,

Defendant and Appellant.

F064087

(Super. Ct. No. 11CEJ600891-1)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Brian M. Arax, Judge.

Candice L. Christensen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez, Wanda Hill Rouzan, and Jamie Scheidegger, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J., and Franson, J.

The court found that appellant, James L., was a person described in Welfare and Institutions Code section 602 after it sustained allegations charging appellant with assault by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1)).

On December 5, 2011, the court ordered appellant to serve 60 days at the Juvenile Justice Center, with credit for 55 days already served, followed by 90 days on the Electronic Monitoring Program.

On appeal, appellant contends the evidence is insufficient to sustain the court's finding that he committed assault. We affirm.

### **FACTS**

At approximately 9:30 a.m. on October 12, 2011, 74-year old Jesus Espinosa was drinking a 32-ounce beer on the front porch of the house where he lived when appellant, A.R., and T.K. came up to a fence surrounding the front yard and began yelling things at him.<sup>1</sup> One of the juveniles then pulled out a BB gun and shot at Espinosa numerous times hitting him on the lower right bicep, upper right bicep, upper left bicep, and on his inner thigh. Later that day, Espinosa identified appellant, A.R., and T.K. at an in-field lineup as the juveniles who shot at him.

Espinosa lived with 16-year-old C.S and her parents. On the morning in question, at approximately 9:45 a.m., C.S was in her mother's bedroom when she heard something like rocks hitting the house. C.S. looked out the window and saw appellant and two other boys standing by a fence on the side of the house.<sup>2</sup> She recognized appellant and T.K. as residents of the neighborhood and saw something black in T.K.'s hand. C.S. also saw the

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<sup>1</sup> Although Espinosa testified that the juveniles did not say anything to him before shooting him, Fresno Police Officer John Rose testified that when he spoke to Espinosa shortly after the assault, Espinosa told him that the juveniles started yelling things at him just before he was assaulted. Espinosa's statement to Officer Rose was admissible for substantive purposes as a prior inconsistent statement. (Evid. Code, § 1235.)!

<sup>2</sup> The house where Espinosa and C.S. lived was located on a corner lot in Fresno.

three boys walk away from the house. Later, a police officer showed her several boys at an in-field lineup and she identified appellant and two other boys as the ones she saw earlier by the fence.

Maria Jimenez lived in an apartment across the street from the house where Espinosa lived. On the morning of October 12, 2011, after seeing Espinosa outside the house shaking, she walked over and asked him what was wrong. Espinosa replied that three boys came up to the fence, yelled at him, and shot him with guns, and that they had just left. Jimenez walked to the corner and she saw three boys running away, laughing among themselves. Later, she identified appellant, A.R., and T.K. in an in-field lineup as the boys she saw earlier running away from Espinosa's residence.<sup>3</sup>

Fresno Police Officer Kent Pichardo responded to the area after Espinosa was shot. At an apartment complex located approximately three blocks from Espinosa's residence, he saw three boys, appellant, A.R., and T.K., who matched the description of Espinosa's assailants. As Officer Pichardo approached the complex, the boys looked in his direction and then ran toward an alley. Officer Pichardo lost sight of the boys for less than a minute. When he spotted them again, they appeared to be hiding, huddled at the corner of a different apartment complex, with one of them peeking around the corner. Appellant and the two other boys then walked out and were detained. After the in-field lineup was completed, Pichardo retraced the route he thought appellant and his friends had traveled. In the bottom corner of a fence, behind a board he found a BB gun.

During an in-custody interview, appellant admitted that after the shooting, he held the BB gun and that he and his friends knew the police were looking for them. However, he denied shooting Espinosa or hiding the gun.

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<sup>3</sup> Although Jimenez only saw the boys from behind, she recognized them because they often walked by there.

## DISCUSSION

Appellant contends the evidence is insufficient to show that he shot the victim or that he aided and abetted in assaulting him. We disagree.

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) “Applying the deferential substantial evidence test, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence from which a rational trier of fact could find the essential elements of the [charged offense] beyond a reasonable doubt. [Citation.] We do not reweigh evidence or reassess [any] witness’s credibility.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 37.)

“A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) “Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment. Among the factors which may be considered in determining aiding and abetting are: presence at the crime scene, companionship, and conduct before and after the offense.” (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.)

Here, appellant and two other juveniles walked up to the fence surrounding the victim's residence and began yelling at him. One of the juveniles brought out a BB gun and discharged numerous BB's at the victim including four which struck the victim and some of which apparently missed and hit the wall behind him. After the victim was assaulted, appellant and the two other juveniles ran away, laughing among themselves. A short time later, appellant fled with the two other juveniles when Officer Pichardo attempted to contact them. Officer Pichardo momentarily lost sight of appellant and his cohorts but soon found them attempting to hide behind the corner of an apartment complex while one of them looked around the corner to see if they were still being followed by the police. After appellant and his friends were detained, a BB gun was found along the path where they had fled. During an in-custody interview, appellant suggested that he may have been the one who discarded the BB gun when he admitted that after the shooting, he handled the BB gun. These facts and our review of the record persuade us that the evidence is sufficient to sustain the court's true finding that appellant aided and abetted the assault of the victim. (Cf. *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1090, 1094 [evidence sufficient to support minor's robbery adjudication where minor was present at the scene of the crime, fled with the perpetrator and two others after the crime had been committed, and was still in their company shortly thereafter].)

Appellant misplaces his reliance on *In re Michael T.* (1978) 84 Cal.App.3d 907 (*Michael T.*) and *Juan H. v. Allen* (2005) 408 F.3d 1262 (*Juan H.*) to argue that the evidence is insufficient to sustain a finding that he aided and abetted the assault of the victim here. *Michael T.* is easily distinguishable because in that case, the minor, although near the scene where another minor murdered a clerk, was not present at the scene of the murder. Thus, even though the minor subsequently made certain statements apparently attempting to identify with the killer and expressing approval of the killing, the appellate court found the evidence insufficient to conclude beyond a reasonable doubt that the

minor was guilty of murder on an aiding and abetting theory. (*Michael T.*, *supra*, 84 Cal.App.3d at p. 911.)

In *Juan H.*, an hour and a half after the trailer in which his family lived was shot at, 15-year-old Juan and his brother, Felix Merendon, saw two rival gang members walking through the trailer park. Juan and Merendon disappeared into the trailer park but Merendon soon appeared from between two trailers and approached the rival gang members. Juan followed and stood behind Merendon as Merendon asked the gang members whether they were the ones who shot at the trailer. When one of them said he did not know what he was talking about, Merendon pulled out a shotgun from his side or front of his pants and fired two shots killing one gang member. Juan did not say anything, make any gestures, or otherwise encourage Merendon who then fled in his car. Juan ran to the family's trailer. (*Juan H.*, *supra*, 408 F.3d at pp. 1266-1267.)

The federal court found that Juan's mere presence when the shooting occurred did "not permit any reasonable factfinder to sustain the delinquency petition of Juan H. on the charges of aiding and abetting first-degree murder and attempted first-degree murder[.]" (*Juan H.*, *supra*, 408 F.3d at pp. 1277-1279.) In so finding, the court stated, "That Juan H. stood behind his older brother after the family home had been attacked, even if he knew his brother was armed, does not permit the rational inference that he knew his brother would, without provocation, assault or murder the victims." (*Id.* at p. 1278.)

*Juan H.* is easily distinguishable because the record here shows more than appellant's mere presence at the scene of the shooting. Accordingly, we reject appellant's sufficiency of the evidence challenge to his adjudication for assault.

### **DISPOSITION**

The judgment is affirmed.